

STATE OF MICHIGAN  
COURT OF APPEALS

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FORD MOTOR COMPANY,

Petitioner-Appellant,

v

TOWNSHIP OF BRUCE,

Respondent-Appellee.

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FOR PUBLICATION

October 5, 2004

9:00 a.m.

No. 246579

Tax Tribunal

LC No. 00-288822

Official Reported Version

Before: Griffin, P.J., and Cavanagh and Fort Hood, JJ.

GRIFFIN, P.J. (*dissenting*).

Petitioner appeals as of right the Michigan Tax Tribunal's sua sponte order of dismissal and order denying leave to amend the petition. The tribunal ruled that it lacked subject-matter jurisdiction to adjudicate this case in which petitioner sought a refund of overpaid personal property taxes pursuant to MCL 211.53a. I would reverse and remand for further proceedings and, therefore, respectfully dissent.

I

"Absent fraud, this Court's review of the Tax Tribunal's decision is limited to determining whether the tribunal erred in applying the law or in adopting a wrong legal principle." *Michigan Bell Tel Co v Dep't of Treasury*, 229 Mich App 200, 206; 581 NW2d 770 (1998). This Court reviews de novo issues involving interpretation and application of statutes, including tax statutes, because they are questions of law. *Danse Corp v Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002).

In this proceeding, the tribunal committed several errors requiring reversal. The most obvious is its ruling that it lacked subject-matter jurisdiction to adjudicate petitioner's claim for a tax refund. In this regard, the tribunal confused the issue of subject-matter jurisdiction, MCR 2.116(C)(4), with the defense of failure to state a claim on which relief can be granted, MCR 2.116(C)(8).

Subject-matter jurisdiction is defined as follows:

In *Joy v Two-Bit Corporation*, 287 Mich 244, 253 [288 NW 45 (1938)], we quoted with approval from *Richardson v Ruddy*, 15 Idaho 488 [494-495] (98 P 842) [1908], as follows:

"Jurisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial." [*In re Chambers Estate*, 333 Mich 462, 468-469; 53 NW2d 335 (1952).]

See also *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993); *People v Eaton*, 184 Mich App 649, 652-653; 459 NW2d 86 (1990), aff'd 439 Mich 919 (1992).

In the present case, the tribunal dismissed the case on the ground that it lacked subject-matter jurisdiction because petitioner did not allege a mutual mistake as required by MCL 211.53a. However, the substantive basis for this ruling was the tribunal's conclusion that petitioner failed to state a claim on which relief could be granted.

MCL 205.731(b) provides in part: "The tribunal's exclusive and original jurisdiction shall be: . . . (b) A proceeding for refund or redetermination of a tax under the property tax laws."

The nature of the claim at issue is plainly set forth in the petition, which requests the tribunal to "order a refund of the excess taxes paid." Clearly, such a proceeding for a refund of property taxes falls within the exclusive and original jurisdiction of the Tax Tribunal. Therefore, the tribunal had subject-matter jurisdiction, and its dismissal on this basis was an error of law. *In re Chambers Estate*, *supra*, and *In re Hatcher*, *supra*.

## II

Next, petitioner argues that the tribunal erred in determining that petitioner failed to allege a mutual mistake of fact as required by MCL 211.53a. I agree. As stated, we review the tribunal's decisions to determine whether it erred in applying the law or in adopting a wrong legal principle. *Michigan Bell Tel Co*, *supra* at 206. But we review de novo issues involving interpretation and application of statutes, including tax statutes. *Danse Corp*, *supra* at 178. MCL 211.53a states:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

The tribunal ruled that the mistake alleged in this case (double taxation of the same personal property) amounted to a unilateral mistake committed only by petitioner. The tribunal stated that this mistake could not be imputed to respondent, despite the fact that respondent relied on petitioner's reporting mistake in assessing the taxes. Essentially, the tribunal ruled that no mutual mistake occurred because the parties arrived at their mistaken beliefs from different bases. However, in reaching this conclusion, the tribunal inappropriately relied on *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104; 548 NW2d 668 (1996).

*Int'l Place Apartments-IV* dealt solely with a claimed clerical error. This Court attempted to define what "clerical error" meant, as that term is used by the Legislature in MCL 211.53b. *Int'l Place Apartments-IV*, *supra* at 108-109. *Int'l Place Apartments-IV* neither mentioned MCL 211.53a nor involved a mutual mistake of fact. Therefore, any reliance on that case in determining the meaning of mutual mistake of fact in MCL 211.53a is inappropriate. Further, MCL 211.53b contains restrictive language limiting mutual mistake to certain situations. In construing a statute, the omission of a provision in one statute included in another statute is presumed intentional. "Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993).

The tribunal's definition of mutual mistake is excessively narrow. It would effectively eliminate personal property from the protection of MCL 211.53a. According to MCL 211.18(2), personal property is assessed after the individual taxpayer creates a personal property statement. Usually, the assessor then relies on this personal property statement to assess the taxes. Under the tribunal's ruling, any mistake in inclusion of exempt property or doubly reported property would always be a unilateral mistake because the taxpayer acts alone in creating the property statement. Therefore, any tax on this property would not be refundable under MCL 211.53a. This is true even though both the taxpayer and the assessor are mistaken regarding whether the property exists or if it is taxable.

The amicus curiae, Michigan Chamber of Commerce, persuasively argues as follows:

The Tribunal then held that "it is reasonable for the assessing officer to rely on the property tax statement in determining the property's assessment" but "said reliance does not, however, give rise to a mutual mistake of fact as the mistake, if any, was made solely by the taxpayer in its preparation of the personal property statement . . . ." Tribunal Order at 2. The Tribunal's conclusion is illogical. The Chamber agrees that "it is reasonable for the assessing officer to rely on the personal property statement." It is this very reliance, however, that makes the mistake of fact mutual. When a taxpayer erroneously reports duplicate property on its property tax statement, the taxpayer has made a mistake of fact—that the duplicate property exists when it does not. When the assessing officer relies on the facts represented in the personal property statement in preparing the tax assessment, the assessing officer shares the mistaken belief that the duplicate property exists. Indeed, if the assessing officer had assessed the property without the requisite belief that the property existed, the officer would have been committing a crime. See MCL 211.116 (providing that "[i]f any . . . assessing officer . . . shall willfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor . . ."). It is clear that, based on the facts alleged, there was a mutual mistake of fact.

Mutual mistake has become a term of art. Reference to a legal dictionary is appropriate in a discussion of the meaning of a term of art. *Hagerman v Gencorp Automotive*, 457 Mich 720, 729 n 5; 579 NW2d 347 (1998). Black's Law Dictionary (7th ed) defines mutual mistake as "[a] mistake that is shared and relied on by both parties . . . ." In *Carpenter v City of Ann Arbor*,

35 Mich App 608, 612; 192 NW2d 523 (1971), we noted that under the Supreme Court decisions in *Spoon-Shacket Co v Oakland Co*, 356 Mich 151; 97 NW2d 25 (1959), and *Consumers Power Co v Muskegon Co*, 346 Mich 243; 78 NW2d 223 (1956) (Smith, J., dissenting) (adopted by the majority in *Spoon-Shacket Co*) "double, or manifold, payment of the same tax" is "one of the simplest of mistakes of fact" "clearly and undisputably entitled to restitution." The *Carpenter* Court explained:

The plaintiff argues that the payments were made under a mistake of fact and can therefore be recovered under the holding in *Spoon-Shacket [supra]*. The plaintiff has referred us to the dissenting opinion of Justice Talbot Smith in *Consumers Power Co [supra]*, the rationale of which was adopted by a majority of the Supreme Court in *Spoon-Shacket*. In Justice Smith's opinion the following is found (pp 262, 263):

"The last section above quoted [1 Restatement Restitution, § 75, p 318], to be carefully distinguished (as does the Restatement) from the case before us, is that relating to the recovery of 'void taxes and assessments.' Such cases normally involve payments made under mistake of law, which, both for historical (see Lord Ellenborough's 'monstrous mistake' in *Bilbie v Lumley*, 2 East 469 [102 Eng Rep 448] and practical reasons, have received fairly short shrift in the courts. Confusion between such cases, and the case before us, involving one of the simplest of the mistakes of fact (double, or manifold, payment of the same tax) is noted in portions of the briefs before us. Here the person paying (*i.e.*, 'where a person pays for the second time a tax due from him personally') is clearly and undisputably entitled to restitution of the amount so paid, whatever the situation may be as to 'void and illegal taxes.' The two situations involve different policy considerations, are differently resolved in the cases and treatises, and should not be muddled by us." [*Carpenter, supra* at 611-612.]

Here, both parties shared the same factual mistake. They mistakenly believed that all the property listed on the personal property statement was taxable to petitioner when it was not, given that some property was doubly reported. Both parties mutually relied on this factual mistake: respondent relied on the mistake to assess the property and enforce the tax, and petitioner relied on the mistake in paying the tax. Therefore, the parties committed a mutual mistake of fact that was intended to be remedied by the Legislature. See also *Wolverine Steel Co v Detroit*, 45 Mich App 671, 674; 207 NW2d 194 (1973) ("We believe § 53a alludes to questions of whether or not the taxpayer has listed all of its property, or listed property that it had already sold or not yet received, etc.").<sup>1</sup>

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<sup>1</sup> This is a correct construction of the statute for purposes of the *Wolverine* case, although I agree with the majority that the statement is obiter dictum.

The majority acknowledges that the term "mutual mistake" has a peculiar meaning in the law of contracts. Because the statute (MCL 211.53a) uses a technical term, the following rule of construction should apply:

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. [MCL 8.3a.]

In my view, the majority ignores the accepted technical understanding of the term "mutual mistake" and substitutes its own construction of the statute on the basis of equitable considerations. While equity will not normally relieve a mistaken party's own negligence, we are construing a statute enacted by the Legislature and deciding this case on the basis of law, not equity. Contrary to the majority's view, petitioner does not seek an "equitable recovery" but, rather, a recovery authorized by statute.

Finally, the decision by the majority to add the limitation of fault to the legal definition of "mutual mistake" is not supported by the language of the statute or any authority. Such a change in policy preference is the province of the Legislature, not the courts.

The primary rule of statutory construction is that this Court should give effect to the Legislature's intent as expressed through the language of the statute. *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 482; 673 NW2d 739 (2003). Given that the tribunal used an excessively narrow interpretation of mutual mistake inconsistent with its proper meaning, it failed to give effect to the Legislature's intent expressed through MCL 211.53a. Therefore, I would hold that the tribunal erred in applying the law and in adopting a wrong legal principle. *Michigan Bell Tel Co*, *supra* at 206. Accordingly, I would reverse and remand for further proceedings.

### III

Petitioner next contends that the tribunal had no authority to dismiss sua sponte petitioner's claim. I agree. The tribunal's rules state that when an applicable tribunal rule does not exist, the Michigan Rules of Court and MCL 24.271 to MCL 24.287 shall govern 1999 AC, R 205.1111(4). The language of the tribunal rule dealing with dismissal, 1999 AC, R 205.1247(3), does not allow the tribunal to dismiss cases sua sponte. Rather, it provides that the tribunal should respond to motions by the parties. Given that no language exists in the tribunal rules allowing for dismissal by the tribunal sua sponte, this Court must turn to the Michigan Court Rules.

Essentially, the tribunal dismissed this case because it concluded that: (1) it lacked subject-matter jurisdiction and (2) petitioner failed to state a claim on which it could grant relief. However, the tribunal's determination that it lacked subject-matter jurisdiction stemmed from its determination that petitioner failed to state a claim (i.e., petitioner failed to allege a mutual mistake of fact in its MCL 211.53a claim); therefore, this is in actuality a dismissal for failure to state a claim. Consequently, a correlation appropriately may be drawn with MCR 2.116(C)(8).

MCR 2.116 allows a court to grant summary disposition on the motion of a party. Contrary to the tribunal's ruling, MCR 2.116 contemplates the parties briefing the issue and being heard before the dismissal. See MCR 2.116(G). Here, the tribunal in essence made a MCR 2.116(C)(8) ruling without the benefit of a motion by respondent, the parties briefing the issues, or allowing petitioner to respond.

No statutes within MCL 24.271 *et seq.* specifically permit the tribunal to issue sua sponte a summary disposition ruling. Pursuant to MCL 24.281(1), an agency such as the tribunal, before issuing a final ruling without a hearing or review of the record, must submit a proposed opinion to the parties and allow adversely affected parties an opportunity to respond. Under the circumstances, the tribunal was required to submit a proposed opinion to petitioner and allow it to respond. MCL 24.281. The Tribunal's dismissal amounted to an unwarranted grant of summary disposition for failure to state a claim, issued without the benefit of briefs or motions.

#### IV

Finally, petitioner contends that the tribunal erred in not allowing it to amend its petition. Again, I agree. The tribunal's decision to dismiss a petition and to not allow a party to amend is reviewed for an abuse of discretion. *Professional Plaza LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002); *Turner v Lansing Twp*, 108 Mich App 103, 112-113; 310 NW2d 287 (1981).

A motion to amend should be granted unless a particularized reason exists such as: (1) undue delay, (2) bad faith or dilatory tactics, (3) repeated failure to cure deficiencies in previous amendments, (4) undue prejudice that would prevent the opposing party from having a fair trial, or (5) futility. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239-240; 615 NW2d 241 (2000). None of the reasons articulated by the Michigan Supreme Court existed in this case.

The tribunal essentially gave two reasons for denying petitioner's motion to amend: (1) petitioner's proposed new petition covered two parcels instead of just one, as required by the tribunal rules and (2) the tribunal lacked subject-matter jurisdiction because petitioner failed to state a mutual mistake pursuant to MCL 211.53a. As concluded above, the tribunal erred in determining that it lacked jurisdiction because petitioner failed to state a mutual mistake. Petitioner did allege a mutual mistake, and the Tribunal did have subject-matter jurisdiction to hear the claim pursuant to MCL 205.731. Therefore, the tribunal erred in determining that petitioner's attempt to amend would be futile. Petitioner could state a valid claim under MCL 211.53a.

The other reason articulated by the tribunal for dismissal, that the petition covers two parcels of property rather than one, does not rise to the level of the particularized reasons articulated by the Supreme Court for denying a motion to amend a petition. Petitioner's original petition dealt with five parcels of property. In its proposed amended petition, petitioner limited the petition to two parcels of personal property. The tribunal stated that part of the reason it would not grant the motion to amend was that the proposed amendment violated tribunal rule 1999 AC, R 205.1240 requiring separate petitions for each parcel of property. Principles of statutory interpretation apply to construction of administrative rules. This Court must enforce the intent of the rule drafters by applying the meaning plainly expressed. Lacking ambiguity,

judicial interpretation is not permitted. *City of Romulus v Dep't of Environmental Quality*, 260 Mich App 54, 65; 678 NW2d 444 (2003). Therefore, we must enforce the plain language of the rule. The plain language of this rule requires petitioner to file two separate petitions for the personal property in question, because it is in different parcels.

Even though the petition was flawed because it dealt with two parcels instead of one, the tribunal should not have dismissed the case and denied petitioner's motion to amend. The flaw in the petition does not rise to the level of undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice, or futility. Respondent would not be prejudiced by an amendment separating this petition into two petitions because the facts would not change, and respondent was placed on notice by the original petition.<sup>2</sup> There has been no previous amendment or bad faith on the part of petitioner. Finally, the amendment would not be futile. Given that none of the particularized reasons articulated by the Supreme Court for denying a motion to amend exists, the tribunal abused its discretion in denying petitioner's motion to amend. *Sands Appliance Services, supra* at 239-240.

I would reverse and remand for further proceedings.

/s/ Richard Allen Griffin

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<sup>2</sup> Recently, in *Ford Motor Co v Bruce Twp*, unpublished opinion per curiam of the Court of Appeals, issued September 14, 2004 (Docket No. 247186), our Court affirmed the dismissal by the Tax Tribunal of a petition by Ford Motor Co. that duplicates the claims made in the present case: "Petitioner has failed to show that the Tribunal erred in dismissing the appeal as duplicative."